1989

State of Utah v. Todd David Willard : Brief of Appellant

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

STATE OF UTAH, :

Plaintiff/Appellant, : Case No. 890693-CA

v. :

TODD DAVID WILLARD, : Priority 2

Defendant/Respondent. :

BRIEF OF APPELLANT

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APPEAL FROM AN ORDER DISMISSING A PROSECUTION INVOLVING TWO SECOND DEGREE FELONIES, IN THE SIXTH JUDICIAL DISTRICT COURT, IN AND FOR SEVIER COUNTY, STATE OF UTAH, THE HONORABLE DON V. TIBBS, PRESIDING.

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IN THE UTAH COURT OF APPEALS

STATE OF UTAH,	:	
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v.	:	
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JURISDICTION AND NATURE OF PROCEEDINGS

This appeal is from an order dismissing a prosecution involving two second degree felonies. This Court has jurisdiction to hear this case under Utah Code Ann. § 78-2a-3(2)(f)(Supp. 1989) and Utah R. Crim. P. 26(3)(a), (Utah Code Ann. § 77-35-26(3)(a) (Supp. 1989) (repealed effective July 1, 1990).

STATEMENT OF THE ISSUE PRESENTED ON APPEAL

1. Did the trial court err by suppressing the evidence discovered during a voluntary consent search?

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES

Utah Const. art. I, § 14:

> The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated; and no warrant shall issue but upon probable cause supported by oath or affirmation, particularly describing the place to be searched, and the person or thing to be seized.

U.S. Const. amend. IV:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

STATEMENT OF THE CASE

The State charged defendant with two counts of possession of a controlled substance with intent to distribute in violation of Utah Code Ann. § 58-37-8(1)(a)(iv) (1988) (amended 1989). Defendant moved to suppress the evidence prior to trial, and Judge Don V. Tibbs denied the motion. After all of the evidence had been presented in a bench trial on May 31, 1989, defendant renewed his motion, and Judge Tibbs reversed his earlier ruling and suppressed the evidence. Judge Tibbs then dismissed the prosecution. The State appeals.

STATEMENT OF FACTS

On March 10, 1988, Sevier County sheriff's deputies stopped defendant at a roadblock located on the ramp leading onto Interstate 70 near Vermillion, Utah (T. 9-10, 17). Deputy Roberts asked for and received defendant's driver's license and vehicle registration (T. 17). While Deputy Roberts was looking at the documents, Deputy Barney instructed her to ask defendant if they could search his truck (T-3. 17-19, 32). Both Roberts and Barney observed that defendant seemed extremely nervous and agitated when Roberts first approached him (T. 18, 23, 32). His hands were trembling and he appeared frightened (T-3. 24). His movements were very quick and he "almost looked like a cornered

animal" (T-3. 32). Barney thought defendant appeared more nervous than the average citizen stopped at a roadblock (T-3. 39).

Deputy Roberts asked defendant if he would mind if they looked through his vehicle (T-3. 19, 28, 40). Defendant responded to the effect that it was all right with him (T-3. 20, 25, 28, 40-41). Defendant and Barney stepped to the back of the truck and Barney asked defendant to unlock it (T-3. 34). While defendant was unlocking the back of the truck, Barney asked if there were any firearms inside (T-3. 34). Defendant said, "Yes. I'll get them. They're at the front." (T-3. 34). Barney said "no" that he would get the firearms. Defendant appeared very nervous and agitated at this time -- according to another officer, he was "wired" (T-3. 49). Defendant and Barney both went to the front of the truck where defendant reached through the window separating the cab from the sleeper and retrieved a gun and a knife (T-3. 34, 44). Barney grabbed defendant's wrists and another officer took the weapons (T-3. 34, 49). The gun was loaded, and Deputy Barney decided to search the rest of the truck (T-3. 34, 50).

The officers asked defendant, who was not immediately handcuffed, to stand away from the truck several times during the ensuing search (T-3. 35, 43, 50). He never asked the officers to stop searching (T-3. 41). At one point he attempted to grab the loaded gun that had been placed on the tailgate of the truck after the officers took it away from him (T-3. 43, 50). Inside the truck the officers found a total of five firearms and a

backpack containing two plastic bags of cocaine (T-3. 35, 45-46, 51). When Deputy Barney pulled the backpack out of the truck, defendant became upset and grabbed at the contents of the pack, ripping the plastic bag (T-3. 36).

Defendant denied that the officers asked for permission to search his vehicle or that he gave them permission (T-3. 56-57). He also claimed that the officers asked him to retrieve the guns that were located in the sleeper portion of the truck (T-3. 59, 61, 70). Judge Tibbs found that defendant consented to the search but ruled that the consent did not authorize the search because defendant should have been allowed to leave before he was asked for consent (T-3. 74-75). Judge Tibbs suppressed the evidence under the federal and state constitutions (T-3. 75), and dismissed the case (R. 78).

SUMMARY OF ARGUMENT

Judge Tibbs suppressed evidence that was discovered during a voluntary consent search. There was no evidence that the consent was coerced by the brief detention required to ask for the consent. Absent a finding that defendant granted consent because of an illegal stop or detention, the evidence should have been admitted under the state and federal constitutions.

ARGUMENT

POINT I

DEFENDANT CONSENTED TO THE SEARCH OF HIS TRUCK, AND THE EVIDENCE DISCOVERED DURING THE SEARCH SHOULD NOT HAVE BEEN SUPPRESSED.

After a hearing on a pretrial motion to suppress, Judge Tibbs ruled that the cocaine discovered in defendant's truck

during a consent search was admissible. After the evidence was admitted at trial, Judge Tibbs changed his ruling. Although the judge found that defendant had consented to the search (R. 73), he went on to suppress the evidence because "[t]he detention of the defendant after the purpose of the roadblock in checking licenses and registrations was satisfied was unreasonable and unconstitutional under the state and federal constitutions." The judge also apparently found that the roadblock was unconstitutional because: "[t]he roadblock was not based on a Utah statute, or written policy and was nothing more than a officous [sic] gentlemen's agreement" (R. 73). Judge Tibbs stated that the fact that defendant consented was "moot" (T-3. 74). He added that consent did not make any difference because defendant should have been allowed to go on his way (T-3. 74-75).

On appeal of a suppression ruling, this Court applies a correction of error standard to the trial court's conclusions of law. State v. Johnson, 771 P.2d 326, 327 (Utah Ct. App.), cert. granted, ___ P.2d ___ (Utah 1989) (citing Oates v. Chavez, 749 P.2d 658, 659 (Utah 1988)). Judge Tibbs' ruling was erroneous in two respects. First, defendant's consent rendered the cocaine admissible regardless of the constitutionality of the roadblock. In State v. Arroyo, 770 P.2d 153 (Utah Ct. App.), cert. granted, ___ P.2d ___ (Utah 1989), and State v. Sierra, 754 P.2d 972 (Utah Ct. App. 1988), this Court held that evidence discovered after an individual voluntarily consents to a search is admissible under the federal constitution regardless of whether the initial stop or detention of that individual was constitutional, unless the

individual is coerced to grant consent by the initial illegality. Arroyo, 770 P.2d at 155; Sierra, 754 P.2d at 980. In the instant case, defendant consented to the search of his vehicle. There is no evidence, nor is there a finding, that the consent was coerced by either the roadblock stop or by the brief detention caused by the officer asking for defendant's consent. Therefore, the evidence should not have been suppressed under the federal constitution. See also United States v. Walraven, 892 F.2d 972, 976 (10th Cir. 1989) (brief detention of defendant to wait for backup and to request consent after NCIC check revealed no criminal conduct was reasonable and did not invalidate the subsequent consent).

In a case very similar to this one, United States v. Diaz-Albertini, 772 F.2d 654 (10th Cir. 1985), cert. denied, 484 U.S. 822 (1987), the Tenth Circuit Court of Appeals upheld the admission of cocaine discovered in a consent search conducted after a roadblock stop to check licenses and registrations. The NCIC computer did not list the Diaz-Albertini vehicle as stolen. The state police officer returned after the NCIC check and requested permission to search the car. Permission was granted and cocaine was discovered. The Tenth Circuit upheld the roadblock and further held that a warrantless search is reasonable when the party in control of a vehicle consents. Id. at 658. The court went on to say that the brief interval required to ask for consent to search did not amount to coercive detention that would invalidate the consent. Id. at 659.

Judge Tibbs' ruling in this case is unclear because it seems to say both that the initial stop was valid, but its validity had dissipated because its purpose had been fulfilled, and that the initial stop was invalid. Despite this lack of clarity, and regardless of which way this Court views Judge Tibbs' ruling, the result should be admission of the evidence. The critical factor in this case is defendant's consent. Under the federal case law, the validity of the initial stop was irrelevant unless the illegality coerced the defendant into granting his consent. Sierra, 754 P.2d at 980. Thus, this Court need not consider the validity of the initial stop and may even assume that it was unconstitutional, and still reverse the lower court's decision.

Even though Judge Tibbs found that the purpose of the roadblock in this case had been fulfilled before Officer Roberts asked to search, he should not have suppressed the evidence under the federal constitution. There were no facts presented that indicate that defendant was coerced to grant his consent by the continued, brief detention. There was no finding of coercion. Judge Tibbs ruled that the continued detention after the driver's license and registration check to ask for consent to search invalidated the consent even without finding any element of coercion. This ruling was erroneous under Walraven and Diaz-Albertini.

Second, Judge Tibbs' suppression of the evidence on the basis of the Utah Constitution was similarly unfounded. He did not apply any different standard under the Utah Constitution when

evaluating the reasonableness of the search than he applied under the federal constitution. Neither defendant nor the State argued that there was any different standard under article I, section 14 of the Utah Constitution. Defendant's memorandum cites only to federal cases or to Utah cases applying federal standards (R. 50-54). The court's order implies that the Utah and federal standards are the same.

The Utah Supreme Court has consistently applied federal standards when faced with a suppression issue. State v. Johnson, 771 P.2d 326, 327, n. 2 (Utah Ct. App.), cert. granted, ___ P.2d ___ (1989). See, e.g., State v. Jasso, 21 Utah 2d 24, 439 P.2d 844 (1968); State v. Criscola, 21 Utah 2d 272, 444 P.2d 517 (1968); State v. Lopes, 552 P.2d 120 (Utah 1976); State v. Banks, 720 P.2d 1380, 1382-84 (Utah 1986); State v. Kelly, 718 P.2d 385, 389-92 (Utah 1986). Unless the State or a defendant argues that the Utah Constitution demands a different standard of reasonableness for searches and seizures under article I, section 14 than that afforded under the Fourth Amendment to the United States Constitution, there is no basis for application of a different standard. State v. Holmes, 774 P.2d 506, 508, n. 1 (Utah Ct. App. 1989).

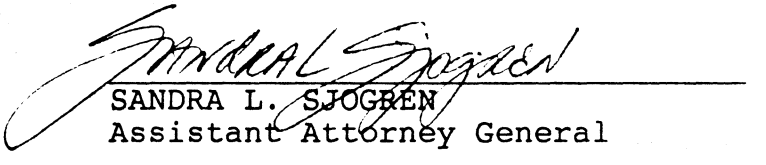
The federal case law provides an acceptable approach that was followed by this Court in Arroyo and Sierra and which should be adopted under the state constitution as well. This Court should reverse the lower court's suppression order because it is erroneous under that standard.

CONCLUSION

Based upon the foregoing, the State requests this Court to reverse the order of the lower court suppressing the evidence and the order dismissing this case. The State further requests that the case be remanded for determination of defendant's guilt or innocence and entry of an appropriate judgment.

DATED this 9 day of April, 1990.

R. PAUL VAN DAM
Attorney General



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CERTIFICATE OF MAILING

I hereby certify that a true and accurate copy of the foregoing Brief of Appellant was mailed, postage prepaid, to Robert Van Sciver, attorney for defendant, 321 South 600 East, Salt Lake City, Utah 84102, this 9 day of April, 1990.